

**CHRISTIAN LAWYERS SOCIETY INC
THE SECOND AUSTRALASIAN CHRISTIAN LEGAL
CONVENTION
“SEEKING GOD FIRST – THE KEY”
Friday 3 May 2002, 9.15am
Bond University**

I am honoured as Patron to welcome you all to this the “Second Australasian Christian Legal Convention”, and especially, if I may, those from interstate and overseas. I particularly welcome our friends from Papua New Guinea who have come here at considerable personal sacrifice. The Convention theme is “Seeking God First – the Key”, introduced on the conference brochure by Matthew 6:33:

“but seek ye first the kingdom of God and his righteousness; and all these things shall be added unto you”,

those “things” being what secular society, indeed the law (technically), would term “necessaries” – clothing and victuals.

May I add another passage which also encapsulates our theme, Amos 5:24:

“But let judgment run down as waters, and righteousness as a mighty stream”.

Scriptural urgings can be relevant in particular ways, and in our context, I would take “righteousness”, to embrace fulfilment of the ethical and other moral obligations incumbent upon us as legal professionals, the duties we must acknowledge and discharge to ensure justice according to law for our clients and the public. What are these duties, and to what extent may a legal practitioner’s religious and moral beliefs guide professional conduct?

It was once said the law was the only profession where one's ethical obligation is to jeopardise another's interests, the flip-side of the lawyer's duty to uphold and promote the client's interest to the best of one's ability, subject to an overriding duty to the court and the administration of the law. In the end, of course, it is for the courts to determine where the merits of the case lie. Nonetheless, in the preceding promotion of the client's interest, the interests of others can often be dissected, even desiccated.

Consider this impasse – you receive instructions from your client to seek a Mareva injunction against a former employee who is being investigated for fraud. You gain the injunction, and your client is appeased. But the next day, as you learn, the fraudulent employee responds by committing suicide. How do you feel? How do you, as a Christian lawyer, rationalise that chain of events? You have acted in your client's best interests, but the consequences of the legal action may have pushed someone to suicide. No ethical problem, but something which would hang heavily on the conscience nevertheless, as regards the Christian stipulation for forgiveness, in this case, the employer in relation to the errant employee.

Bearing this in mind, I repeat the query sometimes raised: "Is it possible to be both a Christian and a lawyer"? You may with facility answer "yes", but what if you should encounter the situation I have just described? In what ways can we strive to achieve this "multi-tasking", of being both a lawyer and a Christian, when

we must supposedly act to the detriment of others in order to fulfil our ethical obligations? How far may we allow our moral and Christian values to influence the way we deal with our clients and the public?

2000 years ago we may have taken comfort from the circumstance that legal ethics and principles were fundamentally based upon biblical ordinances. In his paper “Ethics and the Adversary System”¹, Justice Crispin (of the ACT Supreme Court) points out that in the letter to the Romans 13:1-6, St Paul refers to the vesting of secular authorities as God’s agents of retribution “to execute wrath on him who practises evil”. We then jump the centuries to St Thomas Aquinas who cautioned that the *lex humana* was subordinate to the divine law of God. St Thomas noted God was “ a conceptual resource that functions as both the Supreme value for human beings and the spiritual energy generating community feelings, as well as the ultimate authority prescribing natural law”.² Blackstone in his “Commentaries on the Laws of England” also acknowledges the supremacy of divine law. But with time and the increasing sophistication of society, existing Church dogma came less readily to answer contemporary ethical and moral dilemmas.

Forward to the third millennium, we as individual lawyers may indeed be shepherded by our religious persuasions, but in a modern world much less

¹ Zadok Paper s95 Autumn 1998

² L.C. Becher, “Encyclopaedia of Ethics – Vol 1”, St James Press, Chicago, 1992 p. 177.

influenced by spiritual values. So again the question – how far can our Christian-based morals influence professional ethical standards in current society?

I believe Christian morality does still inform the law as such. Sir Gerard Brennan, in an exceptional speech entitled “Commercial Law and Morality”³, suggested that

“moral values can and manifestly do inform the law...The stimulus which moral values provide in the development of legal principles is hard to overstate, though the importance of the moral matrix to the development of judge-made law is seldom acknowledged. Sometimes the impact of the moral matrix is obvious, as when notions of unconscionability determine a case. More often the influence of common moral values goes unremarked. But whence does the law derive its concepts of reasonable care, of a duty to speak, of the scope of constructive trusts – to name but a few examples - save from moral values translated into legal precepts.”

There is still generally a comparability between secular morality and Christian morality. So the Christian lawyer may work generally comfortably within the law as defined.

But what of our dealings with clients, and as to the application of the law in areas permitting of discretion? Our moral and ethical principles undoubtedly colour our conduct with clients and the legal profession as a whole. A lawyer naturally strives to be moral – in dealings both within and outside the law. We may sometimes be faced with a precarious balancing act – to encourage our clients to

³ *Melbourne University Law Review* 17 (1989) 100-106 at p. 101.

act morally while, in discharging our duty, facilitating their tough lawful pursuit of legal rights. Fortunately, as Sir Gerard Brennan emphasized, there is generally still a reflection of Christian morality in the definition of those rights. It is where there is scope for discretion that the Christian lawyer may be challenged in the influence he or she brings to bear.

Now we must, I suggest, be careful not to be unduly evangelistic in our approach to our clients. We must realize there are many considerations to be taken into account when we advise or counsel our clients, or make preliminary judgments as to the merits of a case. We do owe a duty to our clients and to the wider public interest which must be vigilantly fulfilled. But there will nevertheless be cases where the ambit of that duty, and the detail of the relevant law, leave difficult, possibly moral twists unresolved. In those situations, the Christian lawyer may legitimately seek to influence the client to do what is “right”.

Lawyers inescapably bring their personal standards and values into their professional dealings. The public expects this: otherwise the client would retain a computer. The Christian lawyer can provide a uniquely beneficial perspective. As I have suggested, traditional Christian morality may still be seen to base modern law. When laws are queried, the challenge is based on what ordinarily decent people think.

But some very real practical challenges are emerging, as the clergy are submerged by abuse allegations; as the traditionally faithful are transported to consider radical notions, as the in-vitro fertilization of a same-sex partner. Without abandoning primary scriptural strictures, how does the contemporary Christian respond to those challenges? “Lovingly” is one abstract answer, but for its generality, not especially helpful.

Of course for the lawyer, the answer is easy in one way. The lawyer must uphold the law. It is not up to the lawyer to encourage the client to act contrary to the law. That is not to exclude the lawyer’s independently agitating for change in a law felt to be wrong.

As I have said, one area where the Christian lawyer can plainly, effectively promote “righteousness” is where the lawyer – and the client – may exercise their independent discretion, where the law does not prescribe the controlling considerations. Where, for example, the issue may be non-legal, say, a business consideration, the lawyer could reasonably in the broader context exert influence to secure a fair, decent, moral, ethical outcome. It is in that case that a Christian lawyer should, I believe, be astute to exert helpful, and that in practice would usually mean subtle, influence.

In another very practical sense, we are able to bring a Christian perspective to professional life in a number of very simple ways: we can try to terminate an

employment relationship without undermining the dignity of the employee, by trying to effect reconciliation when relationships are at breaking point and, perhaps most importantly, using our talents and position in the community by representing the disadvantaged and underprivileged. I recently spoke at the opening of QPILCH – the Queensland Public Interest Law Clearing House for those of you who disdain acronyms, which coordinates the provision of *pro bono* services especially in public interest cases by the Queensland profession, an initiative to be strongly commended. In this context I encourage you to give serious consideration to the directives of Psalm 82 - aptly entitled “A Plea for Justice”, to

“Defend the poor and fatherless;

Do justice to the afflicted and needy;

Deliver the poor and needy;

Free *them* from the hand of the wicked”

Some features of the legal profession over the last 12 months in this country have raised acute ethical problems: barristers not discharging their taxation obligations, and the disclosure issue in the recent McCabe tobacco company litigation are prime examples. Lawyers are generally deeply concerned about those matters, Christian lawyers included. I hope those and other practical issues will arise in discussion during the conference. Theoretical musings are interesting: consideration of practical problems can actually be helpful!

Finally, a caution from St Thomas Aquinas in *De Ente et Essentia* : “a small error in the beginning leads to a multitude of errors in the end.” Having mentioned this, I trust this brief speech of welcome will not be seen to jeopardize the remainder of the convention! Our ethical and moral practices will form the foundation for the complicated decisions we have to make as all lawyers, not merely Christian ones. Our values will cause us to reach conclusions and act in ways which impact upon others and ourselves – it is up to us to determine whether our actions are corrosive or, worse, malevolent and destructive, or whether on the other hand, they truly enrich and fortify all of us. The choice is up to us! I sincerely hope the Convention will both enrich and fortify all participants.